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09/774,768	01/31/2001	Dror Segal	32941 070591.0135	5534
21003 7590 10/01/2009 BAKER BOTTS L.L.P. 30 ROCKEFELLER PLAZA 44TH FLOOR NEW YORK, NY 10112-4498				
EXAMINER				
ROSEN, ELIZABETH H				
ART UNIT		PAPER NUMBER		
3692				
NOTIFICATION DATE		DELIVERY MODE		
10/01/2009		ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte*: DROR SEGAL, ANNE E. ALLEN, and MARK HICKS

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Application No. 09/774,768  
Technology Center 3600

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Mailed: September 30, 2009

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Before Deborah L. Perry, Supervisory Paralegal Specialist, Review Team.

**ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER**

This application was electronically received by the Board of Patent Appeals and Interferences on September 21, 2009. A review of the application revealed that it is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the Examiner to address the following matter(s) requiring attention prior to docketing.

APPEAL BRIEF, SUMMARY OF CLAIMED SUBJECT MATTER

Appellant filed an Appeal Brief dated February 10, 2009, correcting the Summary of Claimed Subject Matter. The Appeal Brief is not in compliance with 37 C.F.R. § 41.37(c) effective September 13, 2004.

According to 37 C.F.R. § 41.37(c)(v), an Appeal Brief must include the following:

(v) *Summary Of Claimed Subject Matter.* A concise explanation of the subject matter defined in each of the independent claims involved in the appeal, which must refer to the specification by page and line number, and to the drawing, if any, by reference characters. For each independent claim involved in the appeal and for each dependent claim argued separately under the provisions of 37 CFR 41.37(c)(1)(vii), every means plus function and step plus function as permitted by 35 U.S.C. 112, sixth paragraph, must be identified and the structure, material, or acts described in the specification as corresponding to each claimed function must be set forth with reference to the specification by page and line number, and to the drawing, if any, by reference characters.

The “Summary of Claimed Subject Matter” appearing on pages 2-6 of the Appeal Brief filed February 10, 2009, is deficient because it does not map independent claims 1, 5, 11, and 15 to the specification by line and page number. The Summary maps to the Published Application 2002/0133449. This is improper. Correction is required.

MPEP § 1205.03 states in part:

(B) When the Office holds the brief to be defective solely due to appellant’s failure to provide a summary of the claimed subject matter as required

by 37 CFR 41.37(c)(1)(v), an entire new brief need not, and should not, be filed. Rather, a paper providing a summary of the claimed subject matter as required by 37 CFR 41.37(c)(1)(v) will suffice. Failure to timely respond to the Office's requirement will result in dismissal of the appeal. See MPEP § 1215.04 and § 711.02(b).

### APPEAL BRIEF, CLAIMS APPENDIX

A review of the Appeal Brief filed September 2, 2008, reveals that claims 1, 5, 10, 11, 15, and 22 in the Claims appendix of the Appeal Brief are not consistent as amended in the last entered amendment filed on September 2, 2008. Appropriate correction of all claims provided in the Claims Appendix in proper format is required.

### CONCLUSION

Accordingly, it is

ORDERED that the application is returned to the Examiner to:

- 1) generate a PTOL-90 setting forth the correct status of the after final amendment and to correct other sections of the Answer as may be required;
- 2) hold the Appeal Brief filed February 10, 2009, defective, as required by 37 CFR § 41.37(d);
- 3) notify the Appellant to submit a "paper" which corrects the Appeal Brief's Summary of Claimed Subject Matter under 37 CFR §41.37(c)(1)(v);

4) acknowledge and consider any “paper” submitted by Appellant to correct the Appeal Brief;

5) obtain correction of the Claims Appendix of the Brief filed September 2, 2008; and

6) for such further action as may be appropriate.

If there are any questions pertaining to this Order, please contact the Board of Patent Appeals and Interferences at 571-272-9797.

DLP/bar

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